IN THE SUPREME COURT OF MISSOURI

No. SC83933

STATE OF MISSOURI ex rel. FORD MOTOR COMPANY,

Relator,

vs.

THE HONORABLE EDITH L. MESSINA,
Circuit Court of Jackson County, Missouri, at Kansas City

Respondent.

ON PETITION FOR WRIT OF PROHIBITION FROM
THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI

BRIEF OF *AMICUS CURIAE* MERLENE GOFF IN OPPOSITION TO FORD MOTOR COMPANY'S PETITION FOR WRIT OF PROHIBITION

Evan A. Douthit #33141
R. Douglas Gentile #34792
Randall L. Rhodes #43211

DOUTHIT FRETS, et al.
10401 Holmes Road, Suite 220
Kansas City, Missouri 64131
816/941-7600
816/941-6666 (facsimile)

Attorneys for *Amicus Curiae* Merlene Goff

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

RULES

BAR JOURNALS

Amicus Curiae Merlene Goff respectfully submits this brief in opposition to Relator Ford Motor Company's Petition for Writ of Prohibition.

INTERESTS OF *AMICUS CURIAE*

On August 6th, 1997, Merlene Goff nearly died when her 1984 Ford Bronco II rolled over 5 times on a New Mexico highway after the right rear tire on the Bronco II detreaded. ***See*** Appendix, p. A-13, ¶¶ 32-33. This wreck occurred while Ms. Goff was driving from her home in Holt's Summit, Missouri, to Nevada. After spending nearly two years in hospitals, rehabilitation facilities and nursing homes learning how to walk, talk and care for herself again, Ms. Goff brought suit against Ford Motor Company ("Ford") on March 28th, 2000, in the Circuit Court of Jackson County, Missouri (the "***Goff*** case"). ***See*** Appendix, pp. A-1 through A-25.

Contemporaneously with the plaintiffs in ***Maria Church v. Ford Motor Company, et al.,*** Case No. 99-CV-228935 (In the Circuit Court of Jackson County, Missouri) (the "***Church*** case") and further, with the plaintiffs in ***Billingsley v. Ford Motor Company, et al.,*** Case No. CV795-42CC (In the Circuit Court of Polk County, Missouri) (the "***Billingsley*** case), Ms. Goff cross-noticed the depositions of Messrs. Nasser, Rintamaki, Baughman and Grush at issue in this appeal. In an effort to avoid duplicitous briefing and potentially conflicting orders, Ford asked Ms. Goff to agree to be bound by Respondent's ruling with respect to these depositions. ***See*** Appendix, p. A-26. Ms. Goff agreed with Ford's request. ***Id.,*** p. A-27.

Ms. Goff's interest is this appeal is real and substantial. Like the plaintiffs in the ***Church*** and ***Billingsley*** cases, Ms. Goff is a Missouri citizen who fell victim to the defective and unreasonably dangerous Ford Bronco II. This Court's resolution of this appeal directly impacts the merits of Ms. Goff's case against Ford. Accordingly, Ms. Goff respectfully files this brief in opposition to Ford's petition for writ of prohibition.

Ms. Goff advises the Court that her lawsuit against Ford (and others) is scheduled to begin trial on January 7th, 2002, and accordingly, Ms. Goff respectfully asks the Court for a resolution of this appeal prior to that date, if possible.

JURISDITIONAL STATEMENT

Ms. Goff adopts Respondent's Jurisdictional Statement.

STATEMENT OF THE FACTS

Ms. Goff adopts Respondent's Statement of the Facts.

In addition to the facts set forth by Respondent, Ms. Goff notes that the depositions of Messrs. Nasser, Rintamaki, Baughman and Grush were sought for some reasons unrelated to the Explorer/Firestone debacle. ***See*** Appendix, pp. A-28 through A-29. Further, Ms. Goff notes that, as of October 30th, 2001, Mr. Nasser is apparently no longer Chief Executive Officer of Ford. ***See*** Appendix, p. A-30. Lastly, Ms. Goff notes that both Ford and PLAC contend that no discovery was done by plaintiffs on the Explorer/Firestone issue before the depositions at issue were served. In fact, Ms. Goff ***did*** engage in such discovery. ***See*** Appendix,

pp. A-31 through A-37. Ford ultimately produced to Ms. Goff the entire collection of Explorer documents on CD-ROM.

POINT RELIED ON

RESPONDENT FORD MOTOR COMPANY IS NOT ENTITLED TO AN ORDER PROHIBITING RESPONDENT FROM ENFORCING HER ORDERS OF AUGUST 3RD, 2001 AND AUGUST 17TH, 2001 BECAUSE RESPONDENT DID NOT ABUSE HER DISCRETION IN THAT: (1) RESPONDENT'S ORDERS WERE NOT ILLOGICAL, ARBITRARY AND/OR UNREASONABLE; AND (2) THE "APEX EMPLOYEE" RULE SHOULD NOT BE ADOPTED BY THIS COURT AND IS INAPPLICABLE BECAUSE THE PLAINTIFFS IN ALL THREE CASES SEEK TO QUESTION THE DEPONENTS ABOUT MATTERS FOR WHICH THE DEPONENTS HAVE UNIQUE, FIRST-HAND KNOWLEDGE.

Giddens v. Kansas City Southern Ry.Co., 29 S.W.3d 813 (Mo.banc 2000)

Simon v. Bridewell, 950 S.W.2d 439 (Tex.App. 1997))

Rinker v. Ford Motor Co., 567 S.W.2d 655 (Mo.App. 1978)

Mo.R.Civ.P. 57.03

ARGUMENT

RESPONDENT FORD MOTOR COMPANY IS NOT ENTITLED TO AN ORDER PROHIBITING RESPONDENT FROM ENFORCING HER ORDERS OF AUGUST 3RD, 2001 AND AUGUST 17TH, 2001 BECAUSE RESPONDENT DID NOT ABUSE HER DISCRETION IN THAT: (1) RESPONDENT'S ORDERS WERE NOT ILLOGICAL, ARBITRARY AND/OR UNREASONABLE; AND (2) THE "APEX EMPLOYEE" RULE SHOULD NOT BE ADOPTED BY THIS COURT AND IS INAPPLICABLE BECAUSE THE PLAINTIFFS IN ALL THREE CASES SEEK TO QUESTION THE DEPONENTS ABOUT MATTERS FOR WHICH THE DEPONENTS HAVE UNIQUE, FIRST-HAND KNOWLEDGE.

For the reasons set forth below, Ms. Goff respectfully suggests that Ford's Petition for Writ of Prohibition should be denied.

A. Respondent Did Not Abuse Her Discretion

The propriety of respondent's Orders is judged on the "abuse of discretion" standard. ***State ex rel. Plank v. Koehr,*** 831 S.W.2d 926, 927 (Mo.banc 1992) (Noting that trial courts are "vested with broad discretion in administering the rules of discovery"). "Judicial discretion is abused when the trial court's ruling is clearly against the logic of the circumstances then before the court and is so arbitrary and unreasonable as to shock the sense of justice and indicate a lack of careful consideration." ***Giddens v. Kansas City Southern Ry. Co.,*** 29 S.W.3d 813,

819 (Mo.banc 2000). Discretionary rulings are "presumed correct" and the party complaining about a trial court's discretionary ruling must shoulder the burden of proving an abuse of discretion. ***State ex rel. Ford Motor Company v. Westbrooke,*** 12 S.W.3d 386, 392 (Mo.App. 2000).

These basic principles of appellate review were glossed over and largely ignored by Ford and PLAC in their briefing. Rather than explaining the appropriate standard of review, Ford and PLAC chose to fill their briefs with unsupported, dire predictions of corporate America grinding to a stop if officers of companies that manufacture defective products are required to testify about those products in lawsuits brought by injured consumers and further, with absurd charges that the plaintiff's bar in Missouri is somehow engaging in misconduct by expecting corporate defendants to follow the letter and the spirit of the Missouri Rules of Civil Procedure.

The fallacy of Ford and PLAC's "Chicken Little" argument and their hypocritical "discovery abuse" allegations will be exposed *infra*. In the meantime, importantly, ***neither Ford nor PLAC have satisfied the burden of proving that Respondent abused her discretion***.

The record illustrates that the parties fully and completely briefed the issues for Respondent. ***See*** Ford's Petition for Writ of Prohibition and/or Mandamus, Vol. I, Tab D, Tab E (which includes Tabs A through C-2) and Tab G (which includes Tabs 1 through 22). Respondent then held a lengthy hearing, at which the parties were given as much time as they needed to present their respective

arguments. ***See*** Ford's Petition for Writ of Prohibition and/or Mandamus, Vol. II, Tab I. Thereafter, the parties ***again*** thoroughly briefed the issues. ***See*** Ford's Petition for Writ of Prohibition and/or Mandamus, Vol. II, Tabs J, K, L and M. Lastly, the issues were fully briefed for the Western District Court of Appeals. ***See*** Ford's Petition for Writ of Prohibition and/or Mandamus, Vol. II, Tabs O and P.

As illustrated above, Respondent's ruling must be "presumed correct." There is not a ***shred*** of evidence or testimony in the record that even suggests that Respondent's ruling was "clearly against the logic of the circumstances then before the court," nor have Ford and/or PLAC proven that the ruling was "so arbitrary and unreasonable as to shock the sense of justice and indicate a lack of careful consideration."

With respect to the trial court's discretion concerning discovery matters, "[i]t is only for an abuse of discretion amounting to an injustice that the appellate courts will interfere." ***State ex rel. Lichtor v. Clark,*** 845 S.W.2d 55, 59 (Mo.App. 1992). Respondent's ruling can hardly be construed as an "injustice."

Bronco II lawsuits are unique in the realm of product liability litigation. In fact, litigation involving the Ford Bronco II has been ongoing for over a decade in state and federal courts across the country. Literally hundreds of lawsuits and claims have been made against Ford by Bronco II victims and families of Bronco II victims. Dozens of depositions of past and present Ford employees were already taken in these prior cases.

The Explorer/Firestone debacle is a recent event.[1] Furthermore, Ford's conduct *vis a vis* the Explorer/Firestone issues is starkly different than Ford's past conduct pertaining to Bronco II tire detreads and rollovers. Post-accident acts and omissions are highly relevant under Missouri punitive damage law. ***See Rinker v. Ford Motor Company,*** 567 S.W.2d 655, 668 (Mo.App. 1978) (Ford's inactivity in correcting a known problem was a basis for punitive damages); ***Letz v. Turbomecca Engine Corp.,*** 975 S.W.2d 155, 165 (Mo.App. 1997) (Failure to "immediately recall" defective product justified submission of aggravating circumstances instruction to the jury). The issues pertaining to the Explorer/Firestone debacle are therefore highly relevant in a Bronco II cases in which punitive damages have been alleged. Thus, under the circumstances, Respondent's ruling was both appropriate and reasonable.

In sum, neither Ford nor PLAC even comes close to proving that Respondent abused her discretion. Ford's Petition should therefore be denied.

B. <u>The "Apex Employee" Rule Should not be Adopted and is Inapplicable</u>

Ford and PLAC urge this Court to adopt the Texas "apex employee" rule for depositions of corporate officers and officials. Both Ford and PLAC suggest

---

[1] Put in context, current reports show slightly over 200 deaths in Explorer rollovers. However, the Bronco II body count is over 2,000, with literally tens of thousands more people injured.

the Texas "apex employee" rule is widely embraced across the country. This suggestion is misleading and wrong.

In stark contrast to the representations by Ford in its briefing, in a recently published article, ***Ford's own defense counsel*** concede that only three jurisdictions, "California, Texas and New York have established guidelines for apex discovery." H. Staudenmaier & C. Babington, ***Effectively Defending High-Level Corporate Officials,*** 30 Arizona Attorney 12 (July/August 2001).[2] These authors go on to note that a majority of jurisdictions have ***not*** established formal guidelines for such discovery. ***Id.***

Parenthetically, even a cursory review of this article reveals the true reason why Ford and PLAC so vigorously oppose allowing plaintiffs to depose high-ranking corporate officials. As Ford's counsel warn in their article, "[a] high-ranking corporate official who is able to deliver a polished presentation and exude a confident manner may persuade opposing counsel to seek a quick settlement in the case. ***An ill-prepared official, on the other hand, can lead to disaster.***" ***Id.*** at 15.

In fact, most of the courts that have addressed this issue have ***not*** adopted the Texas "apex employee" rule. Rather, the majority of courts have dealt with the

[2] These authors work for Snell & Wilmer, one of Ford's counsel of record in this appeal.

issue of deposing high-ranking corporate officials in the unique context of each particular case.

This Court should follow suit and decline the invitation by Ford and PLAC to adopt the Texas "apex employee" rule. A case-by-case analysis by trial judges like Respondent who can invite briefing and conduct hearings is a better-reasoned result than a strict, boilerplate rule that makes no distinction for unique facts and circumstances.

Donning its "Henny Penny" costume (in perfect harmony with Ford's "Chicken Little" theme), PLAC bemoans what it claims is the "disturbing trend" of plaintiffs in Missouri civil cases seeking to depose a defendant's employees.[3] Interestingly though, to date, there is not a ***single*** reported appellate decision in Missouri addressing the depositions of high-ranking corporate officials. Conversely, Texas adopted the "apex employee" rule in ***Crown Central Petroleum Corp. v. Garcia,*** 904 S.W.2d 125 (Tex. 1995). In the ensuing six

[3] Only an organization that represents the international corporate monoliths that PLAC represents could have the audacity to seek to chastise plaintiffs for expecting corporations to comply with the Missouri Rules of Civil Procedure. The notion that the plaintiffs in ***Church, Goff*** and ***Billingsley*** can somehow "intimidate" Ford --- one of the largest corporate citizens in the world --- borders on the absurd.

years, well over a dozen appellate opinions have been devoted to further explaining and/or fleshing out the "apex employee" rule.

Unlike the Texas "apex employee" rule, Missouri law is simple and straightforward. Mo.R.Civ.P. 57.03(a) allows that "any party may take the testimony of any person, including a party, by deposition upon oral examination." There is no exception in this rule for high-ranking executives from Fortune 500 companies. If a defendant believes a proposed deposition is improper, then it has the option under Rule 56.01(c) to seek a protective order.

"If it ain't broke, don't fix it." That age-old phrase aptly (if not grammatically) sums up this issue. This Court should not adopt the Texas "apex employee" rule.

Ford and PLAC provide the Court with string cites of cases in which the depositions of high-ranking employees were not allowed, for various reasons. There is an equally long string cite of cases that ***allow*** such depositions. ***See, e.g., Six West Retail Acquisition v. Sony Theatre Management Corp.,*** 2001 WL 1033571 (S.D.N.Y. 2001) (Compelling depositions of high-ranking corporate officials); ***Boales v. Brighton Builders, Inc.,*** 29 S.W.3d 159 (Tex.App. 2000) (Holding "apex employee" rule inapplicable when deposition of high-ranking official is sought for deponent's personal knowledge); ***A.I.A. Holdings, S.A. v. Lehman Brothers,*** 2000 WL 1538003 (S.D.N.Y. 2000) (Chairman of defendant required to be deposed); ***Wilson v. Olathe Bank,*** 1999 WL 79651 (D.Kan. 1999) (Ordering president of bank to appear for deposition); ***Simon v. Bridewell,*** 950

S.W.2d 439 (Tex.App. 1997) (Officer with first hand knowledge cannot avoid deposition because of "apex" status); ***Speadmark, Inc. v. Federated Dept. Stores, Inc.,*** 176 F.R.D. 116 (S.D.N.Y. 1997) (Rejecting "apex" rule and requiring CEO to appear for deposition); ***Naftchi v. New York University Medical Center,*** 172 F.R.D. 130 (S.D.N.Y. 1997) (Ordering dean of university to appear for deposition, despite "know nothing" affidavit); ***Frozen Food Express Industries, Inc. v. Goodwin,*** 921 S.W.2d 547 (Tex.App. 1996) (Ordering deposition of CEO); ***Taylor v. National Consumer Coop Bank,*** 1996 WL 525322 (D.D.C. 1996) (Noting it was "doubtful" that "apex" rule applied in federal court and ordering deposition of president and CEO); ***Nalco Chem. v. Hydro Technologies, Inc.,*** 149 F.R.D. 686 (E.D.Wis. 1993) (Rejecting "busy schedule" argument and ordering president to appear for deposition); ***Rolscreen Co. v. Pella,*** 145 F.R.D. 92 (S.D. Iowa 1992) (Holding it would be an abuse of discretion not to allow deposition of president); ***Ierardi v. Lorillard,*** 1991 WL 158911 and 66799 (E.D.Pa. 1991) (Allowing depositions of presidents); ***Travelers Rental Co. v. Ford Motor Company,*** 116 F.R.D. 140 (D.Mass. 1987) (Ordering high-ranking corporate officials to appear for deposition); ***Kuwait Airways Corp. v. American Security Bank,*** 1987 WL 11994 (D.D.C. 1987) (Requiring CEO to appear for deposition).

The most powerful and important person on the planet --- the President of the United States --- has been required to submit to a deposition in civil lawsuit. ***See William Jefferson Clinton v. Paula Corbin Jones,*** 520 U.S. 681, 117 S.Ct. 1636, 137 L.Ed.2d 945 (1997). If the President of the United States can be made

to give a deposition in a case in which only ***one*** person has allegedly been victimized, certainly, four executives of a corporation can and should be required to be deposed about a product manufactured by their company that has killed ***thousands*** of innocent men, women and children and injured ***thousands*** more. Just as the Supreme Court of the United States refused to create an "Executive Office" exception to the Federal Rules of Civil Procedure, so should this Court refuse to create a "Fortune 500" exception to the Missouri Rules of Civil Procedure.

It is important to understand that the plaintiffs in ***Church, Goff*** and ***Billingsley*** do not seek to depose Messrs. Nasser, Rintamaki, Baughman and Grush simply because of their status as officers but rather, plaintiffs seek to depose these gentlemen about personal knowledge they each have regarding highly important issues in these Bronco II cases. Thus, even if this Court were inclined to join the minority of courts and adopt the "apex employee" rule, in these cases, that rule would not preclude the depositions at issue.

1. Jacques Nasser

As soon as the Explorer/Firestone debacle arose, Mr. Nasser thrust himself into the public eye as Ford's spokesperson on issues of safety and Ford's corporate standard of care, all of which is highly relevant in all three of the cases affected by

this appeal.[4] Through his televised Congressional testimony and more importantly, through the several television commercials he made for Ford, Mr. Nasser has spoken directly to the very jurors who will decide the ***Church, Goff*** and ***Billingsley*** cases.

In light of the obligations and responsibilities that Mr. Nasser thrust upon himself, the juries in all three cases will obviously expect to hear from Mr. Nasser on many relevant issues, not the least of which is why Ford has not recalled the woefully defective and unreasonably dangerous Bronco II, despite the carnage the Bronco II has caused on American roads and highways.[5]

Furthermore, on behalf of Ford, Mr. Nasser signed Ford's 1999 10K submission to the Securities and Exchange Commission. On that document, Bronco II litigation was listed as Ford's highest exposure product liability area. ***See*** Ford's Petition for Writ of Prohibition and/or Mandamus, Vol. II, Tab I, pp.

---

[4] Examples of Mr. Nasser's public comments in this regard can be found in Ford's Petition for Writ of Prohibition and/or Mandamus, Vol. I, Tab G, pp. 2-6.

[5] This testimony is relevant and admissible to support plaintiffs' punitive damages claims. ***See Rinker v. Ford Motor Company,*** 567 S.W.2d 655, 668 (Mo.App. 1978) (Ford's inactivity in correcting a known problem was a basis for punitive damages); ***Letz v. Turbomecca Engine Corp.,*** 975 S.W.2d 155, 165 (Mo.App. 1997) (Failure to "immediately recall" defective product justified submission of aggravating circumstances instruction to the jury).

22-24. What steps did Mr. Nasser, as CEO of Ford, take to investigate the Bronco II liability? If he did nothing, despite signing a document containing this information, why?

These are all critically important issues about which the juries in these cases are entitled to learn. Only Mr. Nasser can testify about his thoughts, his intents and his motives. For example, Mr. Nasser told Congress and the American public (including all of the potential jurors for these cases) that the safety of Ford's customers was important and "uppermost" on Ford's mind. Did Mr. Nasser include in this statement Bronco II customers, who have died over the years at a far more rapid rate than Explorer customers?

The foregoing are only a few examples, but the point is nevertheless obvious. Only Mr. Nasser can answer these types of questions. Respondent properly ordered Ford to produce Mr. Nasser for deposition.[6]

---

[6] It is worth noting that, in August of this year, Mr. Nasser was deposed for two straight days in the Multi-District Litigation pertaining to Explorer/Firestone issues. Notwithstanding Ford and PLAC's dire warnings that corporate America would be decimated if high-ranking corporate officials of Fortune 500 companies were required to "play by the rules" like everybody else, Ford, remarkably, survived Mr. Nasser's two day absence. Ms. Goff respectfully suggests that an additional day of deposition testimony will likewise not harm Ford, particularly since Mr. Nasser has retired.

2. John Rintamaki

Ford's briefing throughout this case has been vague as to Mr. Rintamaki's position at Ford. In fact, Mr. Rintamaki is an important witness for the plaintiffs. According to Mr. Nasser, Mr. Rintamaki has had "company wide responsibility for leading the tire team at Ford" and further, Mr. Rintamaki possesses "specific information on how [Ford] reached [its] decision to replace these [Firestone] tires." ***See*** Ford's Petition for Writ of Prohibition and/or Mandamus, Vol. I, Tab G.1. p, 3.

Tire failure issues are paramount in Bronco II cases. Two of the three cases affected by this appeal involve tire detreads, the very phenomenon at issue in the Explorer/Firestone debacle. Mr. Rintamaki's personal knowledge concerning this issue as the company-wide head of Ford's tire team could not be more relevant.

3. Thomas Baughman

Mr. Baughman is also an important witness for many of the same reasons that Mr. Rintamaki is important. Mr. Baughman, who serves as Ford's Engineering Director for North American Truck, has a vast amount of knowledge regarding how Ford analyzes and defines defective tires. ***See*** Ford's Petition for Writ of Prohibition and/or Mandamus, Vol. I, Tab G.12.

Again, tire failure and Ford's analyses thereof are critically important issues in Bronco II litigation. Two of the three cases impacted by this appeal involve tire detreads, the very phenomenon at issue in the Explorer/Firestone debacle. Plaintiffs should be entitled to depose Mr. Baughman.

Like Mr. Nasser, Mr. Baughman was deposed in the Multi-District Litigation pertaining to Explorer/Firestone issues. Again, contrary to the predictions of Ford and PLAC, Ford managed to survive Mr. Baughman's absence without any meaningful corporate downfall. Interestingly, Mr. Baughman gave extensive testimony about issues important to the Bronco II, including track width, wheel base, yaw rate, J turn testing, oversteer, understeer, center of gravity and handling. ***See*** Ford's Petition for Writ of Prohibition and/or Mandamus, Vol. I, Tab G.14. Plaintiffs should be allowed to question Mr. Baughman about this issues relative to the Bronco II.

4. Ernest Grush

Ford has now agreed to produce Mr. Grush for deposition, so no discussion of the need for his testimony is needed.

It is important to put the issue before the Court in context with Bronco II litigation. In June of 1995, Ford lost its first Bronco II trial. The jury in that case awarded $25 million in actual and punitive damages. ***See Ford Motor Company v. Cammack,*** 999 S.W.2d 1 (Tex.App. 1998). Later that year, another jury found the Bronco II to be defective, awarding $4.4 million in compensatory damages and $58 million in punitive damages. ***See Ford Motor Company v. Ammerman,*** 705 N.E.2d 539 (Ind.App. 1999). The appellate court concluded in ***Ammerman*** that, with respect to the Bronco II, "Ford engaged in a course of action which under existing conditions, showed an utter indifference for the rights of consumers." ***Id.*** at 557.

Stunned by two back-to-back verdicts condemning the Bronco II, Ford managed to avoid trying another Bronco II case until 1998. The wait did not help Ford. This time, the jury awarded $17.5 million dollars. ***Clay v. Ford Motor Company,*** 215 F.3d 663 (6th Cir. 2000). In 1999, the Eleventh Circuit Court of Appeals, citing the sordid Bronco II history, concluded there was a question of fact as to whether Ford's conduct relative to the Bronco II was willful, wanton or reckless. ***Watkins v. Ford Motor Company,*** 190 F.3d 1213 (11th Cir. 1999). Most recently, two more trials in 2000 resulted in jury verdicts of $5 million (***Sweeney v. Ford***) and $52 million (***Raimondi v. Ford***).

In the meantime, Ford's Bronco II defense strategy has been revealed to be not merely a charade, but rather, a lie predicated upon perjorious testimony bought and paid for by Ford. In March of 2001, The Honorable John Copenhaver, Jr., United States District Judge for the Southern District of West Virginia at Charleston found, as a matter of law, that Ford conspired through its agents (its defense counsel) with a former employee to provide false testimony in Bronco II cases. ***Brenda Goff v. Ford Motor Company,*** Case No. 2:97-0341 (March 15, 2001).[7] ***See*** Appendix, pp. A-38 through A-40. Three months later, the South Carolina Court of Appeals concluded that the conspiracy between Ford and its

[7] This conspiracy between Ford and its former employee, a conspiracy facilitated by Ford's defense counsel, was first exposed to the public eye by the plaintiffs in the ***Cammack*** trial, discussed *supra*.

former employee through which Ford knowingly purchased and used false testimony might constitute "fraud on the court." ***Chewing v. Ford Motor Company,*** 550 S.E.2d 584 (S.C.App. 2001).

It is against this backdrop of Bronco II events that the issue before the Court must be addressed. In its effort to deflect blame in the Explorer/Firestone debacle to Firestone, Ford's top executives have been used by Ford in a media and public relations blitz designed to portray Ford as a safety-conscious corporate citizen. This well-orchestrated campaign, however, ignores the Bronco II.

These same executives who have spoken directly to very jurors who will hear the three cases affected by this appeal and who have told those jurors Ford is a good corporate citizen concerned about the safety of its customers should be required to answer questions about the Bronco II. What has this "good corporate citizen" done in response to verdict after verdict condemning the Bronco II? What does this "good corporate citizen" think about the Bronco II body count, which is many times the Explorer body count? What does this "good corporate citizen" think about buying and using false testimony from former employees and committing fraud on the court?

The Bronco II is defective and unreasonably dangerous. Ford will go to any length --- including buying and using perjury and committing fraud --- to hide the truth. Ms. Goff respectfully asks this Court to see this appeal by Ford for what it really is --- another attempt by Ford to keep the American public in the dark. Ford's petition for writ of prohibition should be denied.

Lastly, Ms. Goff is compelled to address the accusations by Ford and PLAC that these depositions constitute some "abuse" by plaintiffs of the discovery process. These charges, coming from one of the worst abusers of the discovery process ever documented in American jurisprudence and further, from the ringleader of the international corporate giants for which discovery abuses are simply "business as usual," are absurd.

Ford makes a habit of abusing the discovery rules. ***See Rozier v. Ford Motor Co.,*** 573 F.2d 1332 (5th Cir. 1978); ***Parrett v. Ford Motor Co.,*** 52 F.R.D. 120 (W.D.Mo. 1969); ***Traxler v. Ford Motor Co.,*** 576 N.W.2d 398 (Mich.App. 1998); ***Babb v. Ford Motor Co.,*** 535 N.E.2d 676 (Ohio App. 1987); ***Buehler v. Whalen,*** 374 N.E.2d 460 (Ill. 1978); ***Haumersen v. Ford Motor Co.,*** 257 N.W.2d 7 (Iowa 1977).

PLAC's "corporate member list" is a "Who's Who" of discovery abusers, including Ford, General Motors [***Baker v. General Motors Corp.,*** 86 F.3d 811 (8th Cir. 1996)], Honda [***Honda Motor Co. v. Salzman,*** 751 P.2d 489 (Alaska 1987)], DaimlerChrysler [***Weiss v. Chrysler Motors Corp.,*** 515 F.2d 449 (2nd Cir. 1975)] and Kawasaki [***Stengel v. Kawasaki Heavy Indus.,*** 116 F.R.D. 263 (N.D.Tex. 1987)]. This is simply the tip of the iceberg. There are published and/or unpublished opinions discussing discovery abuses by virtually all of PLAC's "corporate members."

Any claims of "discovery abuse" by Ford and PLAC are without merit. Plaintiffs are simply asking Ford to comply with the Missouri Rules of Civil Procedure, nothing more and nothing less.

CONCLUSION

Ford's Petition for Writ of Prohibition should be denied.

CERTIFICATE REQUIRED BY SPECIAL RULE NO. 1 (C)

The undersigned certifies that this brief complies with Special Rule No. 1(b), Mo.R.Civ.P. 55.03, and contains 5,306 words. The undersigned further certifies that, pursuant to Special Rule No. 1(f), a virus-free floppy disk containing this brief was filed concurrently therewith.

DOUTHIT FRETS ROUSE &
& GENTILE, L.L.C.

_____

Evan A. Douthit #33141
R. Douglas Gentile #34792
Randall L. Rhodes #43211

10401 Holmes Road, Suite 220
Kansas City, Missouri 64131
816/941-7600
816/941-6666 (facsimile)

Attorneys for *Amicus Curiae*
Merlene Goff

CERTIFICATE OF SERVICE

The undersigned certifies that one copy of the foregoing brief in paper form and on disk (in compliance with Special Rule No. 1) have been served on November 1st, 2001, via 1st Class Mail, to:

The Honorable Edith Messina
Division 12
Jackson County Circuit Court
415 East 12th Street
Kansas City, Missouri 64106

RESPONDENT

Randy James, Esq.
RISJORD & JAMES, P.C.
218 N.E. Tudor Road
Lee's Summit, Missouri 64086

Douglas R. Horn, Esq.
THE HORN LAW FIRM
4741 S. Arrowhead Drive, Suite B
Independence, Missouri 64055

ATTORNEYS FOR THE ***CHURCH*** PLAINTIFFS

Steve Garner, Esq.
THE STRONG LAW FIRM
901 East Battlefield Road
Springfield, Missouri 65807

ATTORNEYS FOR THE ***BILLINGSLEY*** PLAINTIFFS

Robert Adams, Esq.
SHOOK HARDY & BACON
One Kansas City Place
1200 Main Street
Kansas City, Missouri 64105

Andrew Ashworth, Esq.
SNELL & WILMER
One South Church Avenue
Suite 1500

Tucson, Arizona 85701

ATTORNEYS FOR FORD MOTOR COMPANY

Randall Hendricks, Esq.
ROUSE, HENDRICKS, et al.
1010 Walnut, Suite 400
Kansas City, Missouri 64106

ATTORNEYS FOR CONTINENTAL TIRE

Jordan Cherrick, Esq.
THOMPSON COBURN LLP
One Firstar Plaza
St. Louis, Missouri 63101

ATTORNEYS FOR *AMICUS CURIAE* PLAC

DOUTHIT FRETS ROUSE &
& GENTILE, L.L.C.

_____

Evan A. Douthit #33141
R. Douglas Gentile #34792
Randall L. Rhodes #43211

10401 Holmes Road, Suite 220
Kansas City, Missouri 64131
816/941-7600
816/941-6666 (facsimile)

Attorneys for *Amicus Curiae*
Merlene Goff